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**IN THE
COURT OF APPEALS OF INDIANA**

VINCENT L. PUCKETT,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 79A02-0603-CR-183
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0502-MR-1

March 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Vincent Puckett appeals his conviction for one count of Class A felony voluntary manslaughter. We affirm.

Issue

Puckett argues the trial court abused its discretion when it excluded evidence that the victim had a history of violent behavior, which Puckett claims would have bolstered his argument that the victim was the initial aggressor and that Puckett was therefore justified in killing him in self-defense.

Facts

On January 31, 2005, Puckett visited William Dycus, the victim, at Dycus's apartment in Lafayette. The purpose of Puckett's visit was to purchase marijuana from Dycus for resale to another buyer. During the visit, Puckett and Dycus sat on Dycus's bed and had a short conversation. Puckett asked Dycus if he could spend the night in the apartment because he feared being turned away from the homeless shelter where he had been staying. Dycus declined, and then became agitated and stated that a lot of people at the shelter owed him money. Dycus began waving a gun around, pointed it at Puckett, and stated that he would kill Puckett because Puckett owed him money, too. Puckett stated that Dycus said, "[y]ou f*** with me, I'll kill you." Appellant's App. p. 446.

Puckett, who is six feet tall and 350 pounds, then punched Dycus in the face, and Dycus fell sideways onto the bed. Dycus was approximately five feet, six inches tall and weighed approximately 130 pounds. Puckett thought he had knocked Dycus out but

jumped on top of him anyway, and the two began to struggle. Puckett successfully knocked the gun away and out of reach. Puckett admitted that he did not have to fight Dycus for the gun due to the size and strength difference between the two men. Puckett then reached for a “big ass folding knife...big blade,” and stabbed Dycus “everywhere on the face” and in his head. Appellant’s App. pp. 447, 455. Puckett then watched Dycus die.

Afterwards, Puckett sat on the bed for a few minutes. He then decided to look around for any of Dycus’s personal belongings that he might want to take. Puckett moved Dycus’s body in order to look under the bed. He left the apartment with some marijuana, a folding pocket knife, and a jar of change, all of which belonged to Dycus. Puckett went straight from the apartment to a bar where he unsuccessfully attempted to sell the jar of change. Puckett then took a taxicab to a liquor store near a motel in West Lafayette and spent the night at the motel. Police found him the next morning with the marijuana and the folding pocket knife.

The State charged Puckett on five separate counts: murder, felony murder, Class A felony robbery while armed resulting in serious bodily injury, Class D felony theft, and Class A misdemeanor possession of marijuana. Puckett was subsequently charged with being an habitual offender on April 1, 2005. Puckett was convicted by a jury of Class A felony voluntary manslaughter, Class D felony theft, and Class A misdemeanor possession of marijuana. Puckett waived trial by jury on the habitual offender count, and was found by the court to be an habitual offender. Puckett now appeals his voluntary manslaughter conviction.

Analysis

Puckett alleges that the trial court erred when it refused to allow Puckett to introduce evidence of Dycus's violent character. Puckett claims that the evidence would have bolstered his argument that Dycus was the initial aggressor and that Puckett was therefore justified in killing Dycus in self-defense. The standard of review for admissibility of evidence issues is whether the trial court's decision was an abuse of its discretion. Bell v. State, 820 N.E.2d 1279, 1281 (Ind. Ct. App. 2005), trans. denied. The decision whether to admit evidence will not be reversed absent a showing of manifest abuse of a trial court's discretion resulting in the denial of a fair trial. Id. Generally, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. Id. In determining whether an evidentiary ruling affected a party's substantial rights, the court assesses the probable impact of the evidence on the trier of fact. Id.

A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act. Ind. Code § 35-41-3-2(a); see also Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). In order to prevail on such a claim when deadly force is used, a defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. Id. An individual is justified in using deadly force only if he or she "reasonably believes that that force is necessary to prevent serious bodily injury to [the individual] or a third person." I.C. § 35-41-3-2(a); see also Harmon v. State, 849 N.E.2d 726, 730 (Ind. Ct. App. 2006). The amount of force that an individual may use to

protect himself or herself must be proportionate to the urgency of the situation. Id. at 730-31. When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. Id. at 731. When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Id.

Puckett's offer of proof was made at the conclusion of the State's case when Puckett attempted to elicit opinion testimony from Dr. Martin Abbert, who allegedly had been treating Dycus for approximately five years preceding his death. The State objected to the offer of evidence, and the objection was sustained. Puckett was then allowed to submit a videotape of Dr. Abbert's deposition outside the presence of the jury as an offer of proof. In the deposition, Dr. Abbert stated that it was his opinion that Dycus suffered from both Bipolar II Disorder and an antisocial personality disorder. According to Dr. Abbert, a person suffering from these disorders may experience depression, aggression, agitation, and indifference to the law. Specifically, Dr. Abbert noted that Dycus was "easily agitated" and had a "proclivity for violence." Appellant's App. p. 664.

Puckett contends that the trial court abused its discretion by excluding the evidence. He claims that he was denied the opportunity to present evidence allowable under Indiana Evidence Rule 404(a)(2), which provides as follows:

(a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

* * * * *

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.

Indiana Evidence Rule 405 permits evidence of a trait of character of a person by reputation or opinion testimony. Bell, 820 N.E.2d at 1282.

Puckett contends that Dr. Abbert's testimony included opinion and specific instances of conduct both showing Dycus's proclivity for violence, and that both should have been admitted into evidence because Dycus's violent character was an essential element of Puckett's defense. However, evidence that Dycus was the initial aggressor was already before the jury and was not being contested by the State. Rather, the State relied on evidence showing that Puckett's use of deadly force was disproportionate under the circumstances in order to disprove Puckett's claim of self-defense.

Indiana Evidence Rule 403 provides, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." Therefore, the trial court had to balance the probative value of Dr. Abbert's opinion and specific instances of conduct testimony against the possibility of the testimony misleading the jury, causing undue delay, or needless presentation of cumulative evidence. See DesJardins v. State, 751 N.E.2d 323, 327 (Ind. Ct. App. 2001), aff'd. in relevant part, 759 N.E.2d 1036 (Ind. 2001). In this case, the probative value of Dr. Abbert's testimony is based upon its ability to demonstrate that Dycus had a proclivity toward violence and was, therefore,

likely the initial aggressor. Puckett's claim of self-defense required that Dycus was the initial aggressor. Thus, the evidence is relevant to Puckett's defense. However, evidence was already before the jury that Dycus was the initial aggressor, and the State did not contest that point. Rather, the State was able to extinguish Puckett's claim of self-defense by demonstrating that Puckett's use of deadly force was disproportionate under the circumstances. In this particular case, Dr. Abbert's testimony would have had low or no probative value because it was not relevant to the disproportionate force issue. His testimony would also have been needlessly cumulative on the initial aggressor issue. Although the testimony may have been relevant to a self-defense claim generally, the trial court did not abuse its discretion when excluding it under the balancing test required by Rule 403.

Conclusion

The trial court did not abuse its discretion in excluding Dr. Abbert's testimony because it had low probative value and was needlessly cumulative. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.